

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

CATHERINE Y MEYER
Claimant

APPEAL NO. 09A-UI-14631-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

Original Claim: 08/23/09

Claimant: Appellant (2)

Section 96.5-2-a – Discharge
Section 96.5-1 – Voluntary Leaving
871 IAC 24.22(2)j – Leave of Absence

STATEMENT OF THE CASE:

Catherine Y. Meyer (claimant) appealed a representative's September 28, 2009 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits in conjunction with employment with Wal-Mart Stores, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 28, 2009. The claimant participated in the hearing. Jessica Mortel appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on April 28, 2002. She worked full-time as a cashier in the employer's Spirit Lake, Iowa store. Her last day of work was July 17, 2009.

The claimant was scheduled for vacation from July 18 through August 2. On or about August 1, the claimant came into the store to check her hours for the next work period starting August 3. However, she saw that there were no hours scheduled for her. She spoke to the personnel director, who did not know why there were no hours scheduled. In their discussion, the claimant mentioned that it was possible that she might have to take some time off anyway to care for her mother, who had been injured. An arrangement was made for the claimant to sign papers for FMLA (Family Medical Leave). When she signed the papers, it was not yet determined if or for how long she might need to care for her mother. The paperwork as processed by the employer set an initial leave period through September 21.

During approximately the next week, it was determined that the claimant's brother stay with their mother, rather than the claimant. On August 10 the claimant came into the store and attempted to find the personnel director or some other member of management so she could discuss returning to work, but neither the personnel director nor another member of management was available. As a result, the claimant left a note on the personnel director's desk, indicating that she would not need the extended leave of absence, and that she could be back to work as early as August 15. When she did not hear back, she established an unemployment insurance benefit year effective August 23. Again on or about September 17 she attempted to reach the personnel director or some other member of management by phone, and again was unable to reach anyone.

As she had received no income since August and the property the claimant was renting was being sold, she moved from her residence near Spirit Lake on about September 21 to a friend's home about 110 miles away. She then inquired about transferring into a store in Sioux Falls, South Dakota, which was nearer, but that request was denied. She has not ruled out returning to the store in Spirit Lake if the employer returns her to work.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a. A voluntary quit is a termination of employment initiated by the employee – where the employee has instigated the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has instigated the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A mutually agreed-upon leave of absence is deemed a period of voluntary unemployment. 871 IAC 24.22(2)j. However, if at the end of the leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits; and, conversely, if at the end of the leave of absence the employee fails to return at the end of the leave of absence and subsequently becomes unemployed, the employee is considered as having voluntarily quit and therefore is ineligible for benefits. Id.

It is still uncertain as to initially why there were no hours scheduled for the claimant beginning August 3, but at least after the fact there was a mutual agreement that beginning that date she would begin a leave of absence. However, the end date of the leave of absence was not mutually agreed to. The claimant took reasonable actions to inform the employer on August 10 that she could return from leave on August 15. The employer has not presented a reasonable explanation as to why the claimant's attempts to communicate with the personnel director were not responded to or why she was not returned to work. The administrative law judge concludes that the employer has failed to satisfy its burden that the claimant voluntarily quit by failing to return from the leave of absence. Iowa Code § 96.6-2. As the separation was not a voluntary quit, it must be treated as a discharge for purposes of unemployment insurance. 871 IAC 24.26(21).

The issue in this case is then whether the employer at least temporarily discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce v.

IDJS, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982).

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good-faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason the employer effectively discharged the claimant, at least temporarily, was the incorrect belief she was not attempting to return from her leave of absence. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's September 28, 2009 decision (reference 01) is reversed. The claimant did not voluntarily quit and the employer did discharge the claimant, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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